

04-CV-05199-CMP

HONORABLE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JAMES DANNENBAUM, JOSE H.
MELENDEZ and all other similarly
situated employees of Defendants,

Plaintiffs,

v.

CSK AUTO, INC., an Arizona
Corporation, ROBIN SCHOFIELD
and JANE DOE SCHOFIELD,
husband and wife; CHET BRADLEY
and JANE DOE BRADLEY, husband
and wife; TIM MASON and JANE
DOE MASON, husband and wife;
and JOHN DOES 1 THROUGH 10,
inclusive,

Defendants.

Case No. C04-5199 FDB

CLASS ACTION

COMPLAINT FOR DAMAGES

1. FAIR LABOR STANDARDS ACT
29 U.S.C. § 215
2. MINIMUM WAGE ACT, RCW 49.46
3. MINIMUM WAGE ACT, RCW 49.46;
49.52
4. CONSUMER PROTECTION ACT,
RCW 19.86
5. RICO, 18 U.S.C. § 1961
6. BREACH OF IMPLIED CONTRACT
7. BREACH OF WRITTEN CONTRACT
8. PROMISSORY ESTOPPEL
9. RACIAL DISCRIMINATION UNDER
RCW 49.60.

JURY DEMAND

COMPLAINT FOR DAMAGES - 1

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ORIGINAL

5/1/04 #510787

COME NOW the Plaintiffs, JAMES DANNENBAUM and JOSE H. MELENDEZ, for themselves and on behalf of all others similarly situated (hereinafter referred to as "The CLASS"), and allege as follows:

I. JURISDICTION, VENUE AND PARTIES

1. All of the unlawful acts complained of herein took place either in the City of Lakewood, Pierce County, Washington and elsewhere within this judicial district.

2. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 based upon federal questions under the laws of the United States. In addition, this Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) as the majority of the illegal acts and conduct alleged in this lawsuit took place within Pierce County, Washington within the Western District of Washington.

4. At all times material hereto, Plaintiff JAMES DANNENBAUM is a resident of Wauna, Pierce County, State of Washington. For approximately five (5) years and presently, he is and was an employee of Defendant CSK Auto, Inc. (hereinafter referred to as "CSK") as a Sales Associate and as a Commercial Sales Manager.

5. At all times material hereto, Plaintiff JOSE H. MELENDEZ is a resident of Tacoma, Pierce County, State of Washington. For approximately eleven (11) years, he was an employee of Defendant CSK as a Sales Associate.

6. Defendant CSK AUTO INC. is an Arizona corporation doing business in the State of Washington with numerous automotive supply stores located within this

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1 judicial district. Defendant CSK is commonly known as "Schuck's Auto Supply,"
2 "Checker's Auto Parts" and "Kragen's Auto Parts."

3 7. Defendants ROBIN SCHOFIELD and JANE DOE SCHOFIELD reside in
4 Bremerton, Kitsap County, Washington and form a marital community under the laws
5 of the State of Washington. All acts performed by Defendant ROBIN SCHOFIELD were
6 done on behalf or, and for the benefit of, the marital community. Defendant ROBIN
7 SCHOFIELD, at all times relevant to this lawsuit, was the District Manager of District
8 No. 161 of the Northwest Region District of the State of Washington for Defendant CSK.
9

10 8. Defendants CHET BRADLEY and JANE DOE BRADLEY reside in Pierce
11 County, Washington and form a marital community under the laws of the State of
12 Washington. All acts performed by Defendant CHET BRADLEY were done on behalf
13 or, and for the benefit of, the marital community. Defendant CHET BRADLEY, at all
14 times relevant to this lawsuit, was the Store Manager for the Lakewood Depot, Store
15 No. 1296 where Plaintiffs DANNENBAUM, Melendez and many members of The
16 CLASS were employed.
17

18 9. Defendants TIM MASON and JANE DOE MASON reside in Pierce
19 County, Washington and form a marital community under the laws of the State of
20 Washington. All acts performed by Defendant TIM MASON were done on behalf or,
21 and for the benefit of, the marital community. Defendant TIM MASON, at all times
22 relevant to this lawsuit, was an Asset Protection Manager within the Northwest Region
23 District of the State of Washington for Defendant CSK.
24
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1 10. The true names and capacities, whether corporate, associate or otherwise
2 of Defendants sued herein as JOHN DOES 1 through 10, inclusively are currently
3 unknown to the Plaintiffs and members of The CLASS who therefore sues Defendants
4 by such fictional names and without official and specific capacities.
5

6 **II. GENERAL ALLEGATIONS RELEVANT TO CLASS REPRESENTATIVES**
7 **INDIVIDUAL AND CLASS CAUSES OF ACTION**

8 Plaintiffs and The CLASS alleges the following:

9 11. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS are
10 current and past employees required to record all actual hours worked during any and
11 all pay periods as set forth in the Policies and Procedures section of the Defendant CSK
12 Associate Handbook. Plaintiffs DANNENBAUM, MELENDEZ and members of The
13 CLASS, in compliance with the CSK Associate Handbook, recorded all of their hours
14 worked for each workday. They recorded the actual time that they began working,
15 their meal periods and the time that they left the work site.
16

17 12. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS, as
18 required by the CSK Associate Handbook, signed each one of their time records
19 indicating that each record was a true and accurate record of all hours that they
20 worked. They signed each one of their time records with the highest level of integrity
21 and honesty expected by Defendant CSK and required by the CSK Associate
22 Handbook.
23

24 13. During Plaintiffs DANNENBAUM, MELENDEZ and The CLASS'
25 employment, beginning on or about August 1999 and continuing until or about March
26

1 12, 2002, Defendant CSK had a policy of rewarding store managers with financial
2 bonuses. In order to receive such a bonus, the store managers must keep the hours
3 worked by personnel as low as possible. Each month, the store managers were given a
4 goal of personnel hours and gross sales. If the personnel hours were lower than that
5 goal, the bonus was significantly higher. If the gross sales were higher, the bonus was
6 greater but not as great as when the personnel hours were lower. When the personnel
7 hours were higher than the goal, the bonus was significantly smaller or nonexistent.
8 Therefore, in keeping with this policy, store managers would do whatever was
9 necessary to reduce the number of personnel hours while making or exceeding the
10 gross sales goal.
11
12

13 14. One of the methods used by Defendants BRADLEY and JOHN DOES was
14 to schedule as few sale associates as possible during each work day and to require those
15 associates to work without breaks, including lunch breaks, during the work day. The
16 Plaintiffs and members of The CLASS would also be required to work in excess of 40
17 hours in a workday; however, the Plaintiffs and members of The CLASS would often
18 only be paid for 40 hours of work or be paid for less overtime than actually worked.
19
20

21 15. Another method used by Defendants BRADLEY and JOHN DOES was to
22 review and edit time records at the end of any and all pay periods. If the Plaintiffs and
23 members of The CLASS did not take lunch breaks during the workdays in any pay
24 period, Defendant BRADLEY would add half-hour lunch periods to their time records,
25 thereby reducing the number of paid work hours during any pay period for Plaintiffs
26 and members of The CLASS. Additionally, if the time records of Plaintiffs and

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1 members of The CLASS reflected overtime hours, Defendants BRADLEY and JOHN
2 DOES would reduce the number of overtime hours with the similar effect of reducing
3 the number of paid work hours for Plaintiffs and members of The CLASS during any
4 pay period.
5

6 16. Defendants BRADLEY AND JOHN DOES also edited the time records of
7 mid managers. Because those managers could access the computerized time records
8 themselves, the managers could go in behind the actions of Defendants BRADLEY and
9 JOHN DOES and correct the edited time records so that their work time was accurately
10 reflected. Plaintiffs DANNENBAUM, MELENDEZ and member of The CLASS were
11 not authorized to access the computerized time records to correct their time records.
12

13 17. Routinely, Plaintiffs DANNENBAUM, MELENDEZ and members of The
14 CLASS worked in excess of 40 hours per workweek. Plaintiffs DANNENBAUM,
15 MELENDEZ and members of The CLASS would only be paid for 40 hours in a
16 workweek, or for less overtime than actually worked.
17

18 18. On or about March 12, 2002, after numerous complaints from Plaintiffs
19 DANNENBAUM, MELENDEZ and members of The CLASS, Defendant MASON, a
20 manager in the Loss Prevention Division of the Northwest Region, which, based on
21 information and belief, is an auditing section of Defendant CSK, came to Store No. 1296
22 to review the time records. Defendant MASON verified the editing of time records.
23 Defendant MASON then took Plaintiff DANNENBAUM and members of The CLASS
24 individually into an office and asked how many hours each individual estimated was
25
26

1 edited from his/her time records. Plaintiff DANNENBAUM and members of The
2 CLASS gave an estimate of the number of hours.

3 19. Regardless of the estimates, Defendant MASON offered significantly less
4 unpaid wages to settle their claims. For example, Defendant MASON offered Plaintiff
5 DANNENBAUM 2.5 hours when his conservative estimate, given without the
6 opportunity to review his records, was over 100 hours of edited, and unpaid wages.
7 Defendant MASON gave Plaintiff DANNENBAUM and members of The CLASS a
8 statement to sign indicating their satisfaction with the offer. Defendant MASON and
9 Defendant JOHN DOES made it very clear to Plaintiff DANNENBAUM and members
10 of The CLASS that they would accept this offer or face retaliation including termination
11 from employment. Because Plaintiff DANNENBAUM and other members of The
12 CLASS did not wish to be terminated from their employment, they signed the
13 statements. Neither Plaintiff DANNENBAUM nor the members of The CLASS were
14 given a copy of the statement. This offer of settlement was not for the total number of
15 hours and each employee was instructed not to discuss the matter outside of the store
16 or face discipline including termination.

17 20. Plaintiff MELENDEZ and other members of The CLASS routinely was
18 required to work in excess of 40 hours per workweek. He was required to take
19 uncompleted work home with him after his workday to complete. He was only paid
20 for 40 hours per workweek or significantly less overtime than he actually worked.

21 21. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS
22 have the following claims in common.

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III. FIRST CAUSE OF ACTION
VIOLATION OF FAIR LABOR STANDARDS ACT, 29 U.S.C. § 215
Against ALL DEFENDANTS

Plaintiffs reallege the above Paragraphs 1 through 20 and incorporates the same as though fully set forth herein.

22. Defendant CSK is an employer engaged in interstate commerce.

23. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS worked in excess of 40 hours per work week without being paid at rates not less than one and one half times their regular rates at which they were employed.

24. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES failed to pay Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS their fair wages for the 40-hour workweek.

25. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES failed and refused to pay them their fair wages for their work in excess of the 40-hour workweek.

26. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES acted knowingly, intentionally and willfully and with intent to deprive Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS of their wages for their 40-hour workweeks and for overtime.

27. As a direct and proximate result of the violation of 29 U.S.C. § 215(a), Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS are entitled to recover their unpaid overtime compensation plus an additional amount in liquidated

1 damages and such other legal and/or equitable relief as may be appropriate to
2 effectuate the purposes of 29 U.S.C. § 215(a).

3
4 **IV. SECOND CAUSE OF ACTION**
5 **WASHINGTON STATE MINIMUM WAGE ACT, RCW 49.46.130**
6 **Against ALL DEFENDANTS**

7 Plaintiffs reallege the above Paragraphs 1 through 27 with the same force and
8 effect and incorporates the same as though fully set forth herein.

9 28. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES
10 failed and refused to pay Plaintiffs DANNENBAUM, MELENDEZ and members of The
11 CLASS their fair wages for the 40-hour workweek.

12 29. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES
13 failed and refused to pay them their fair wages for their work in excess of the 40-hour
14 workweek.

15 30. Defendants CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES
16 acted knowingly, intentionally and willfully and with intent to deprive Plaintiffs
17 DANNENBAUM, MELENDEZ and members of The CLASS of their wages for their 40-
18 hour workweeks and for overtime.

19 31. As a direct and proximate result of the violation of RCW 49.46.090,
20 Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS are entitled to
21 recover their unpaid overtime compensation plus an additional amount in liquidated
22 damages and such other legal and/or equitable relief as may be appropriate to
23 effectuate the purposes of RCW 49.46.090.
24
25
26

V. THIRD CAUSE OF ACTION

**WASHINGTON STATE MINIMUM WAGE ACT, RCW 49.46.100 and 49.52.050
Against DEFENDANT BRADLEY and JOHN DOES**

Plaintiffs reallege the above Paragraphs 1 through 31 with the same force and effect and incorporates the same as though fully set forth herein.

32. Defendants BRADLEY and JOHN DOES, on behalf of Defendants CSK and SCHOFIELD, routinely edited, changed and falsified the time records of Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS in violation of RCW 49.46.100.

33. Defendants BRADLEY and JOHN DOES, on behalf of Defendants CSK and SCHOFIELD, acted willfully and with intent to deprive Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS of their wages for their 40-hour workweeks and for overtime pay.

34. As a direct and proximate result of the violation of Washington State law, Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS are entitled to twice the amount of their wages, which were withheld by Defendants, including their attorneys' fees and costs.

VI. FOURTH CAUSE OF ACTION

**WASHINGTON STATE CONSUMER PROTECTION ACT, RCW 19.86 ET SEQ.
Against DEFENDANTS CSK, SCHOFIELD, BRADLEY and JOHN DOES**

Plaintiffs reallege the above Paragraphs 1 through 34 with the same force and effect and incorporates the same as though fully set forth herein.

1 35. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES engaged in
2 an unfair and deceptive practice by editing the time records of Plaintiffs
3 DANNENBAUM, MELENDEZ and members of The CLASS.

4
5 36. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES' unfair and
6 deceptive practices occurred while they engaged in trade and commerce.

7 37. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES' unfair and
8 deceptive practices affected the public interest because:

- 9 a. Those practices were committed in the course of Defendant's business;
10
11 b. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS and
12 Defendants occupied unequal bargaining positions;
13
14 c. Defendants' practices were part of a pattern or generalized course of
15 conduct; and
16
17 d. There is a real and substantial potential for repletion of Defendants' unfair
18 and deceptive practices after the acts involving Plaintiffs DANNENBAUM,
19 MELENDEZ and members of The CLASS.

20 38. As a direct and proximate result of the violation of the Washington
21 Consumer protection Act, RCW 19.86 *et seq.*, Plaintiffs DANNENBAUM, MELENDEZ
22 and members of The CLASS are entitled to recover lost pay, treble damages, attorneys'
23 fees and costs in amounts to be determined at trial.

24 **VII. FIFTH CAUSE OF ACTION**
25 **RICO, 18 U.S.C. § 1961 ET SEQ.**
26 **Against DEFENDANTS CSK, SCHOFIELD, BRADLEY and JOHN DOES**

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1 Plaintiffs reallege the above Paragraphs 1 through 38 with the same force and
2 effect and incorporates the same as though fully set forth herein.

3 39. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES' conduct of
4 falsifying time records in violation Washington State law and refusing and failing to
5 pay Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS their fair
6 wages required by federal and state law is illegal conduct.

7
8 40. Defendant CSK forms an enterprise under 18 U.S.C. § 1961(5). Defendants
9 CSK, SCHOFIELD, BRADLEY, MASON and JOHN DOES' conspired to violate federal
10 and state law by falsifying time records in violation Washington State law, by refusing
11 and failing to pay Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS
12 their wages required by federal and state law. This conspiracy amounts to a pattern of
13 racketeering activity.

14
15 41. The indictable offenses committed by Defendants CSK, SCHOFIELD,
16 BRADLEY, MASON and JOHN DOES include wire fraud prohibited by 18 U.S.C. §
17 1341 by virtue of the fact that the falsified time records in violation of federal and
18 Washington State law and inadequate minimum wages were wired to Defendant's
19 corporate offices by way of wire transmission via computer. The Defendants
20 represented that the time records were accurate and material records of time actually
21 worked by the Plaintiffs and members of The CLASS, that the records were false, that
22 the Defendants knew that the records were false and the Defendants intended that the
23 Plaintiffs and members of The CLASS would rely on the Defendants to forward correct
24 and accurate time records, that the Plaintiffs and members of The CLASS did not know

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1 that the time records were falsified, that the Plaintiffs and members of The CLASS did
2 rely, and had the right to rely, on the Defendants to forward correct and accurate time
3 records of the hours they worked and that the Plaintiffs and members of The CLASS
4 suffered damage by receiving inadequate and inaccurate pay checks as a result of such
5 reliance.
6

7 42. Furthermore, the false records and resultant inaccurate and incorrect
8 paychecks, reflecting violations of federal and state law, were transmitted to Plaintiffs
9 DANNENBAUM, Melendez and members of The CLASS via Air Express, in violation
10 of FCC laws and regulations.
11

12 43. As a direct and proximate result of the racketeering activity alleged
13 herein, Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS is entitled
14 to their economic losses, treble damages as well as attorneys' fees and costs in amounts
15 to be determined at trial.
16

17 **VIII. SIXTH CAUSE OF ACTION**
18 **IMPLIED CONTRACT UNDER THE COMMON LAW**
19 **OF THE STATE OF WASHINGTON**

20 **Against DEFENDANTS CSK, SCHOFIELD, BRADLEY and JOHN DOES**

21 Plaintiffs reallege the above Paragraphs 1 through 43 with the same force and
22 effect and incorporates the same as though fully set forth herein.
23

24 44. By agreeing to accept the terms of employment offered by Defendants
25 CSK, SCHOFIELD, BRADLEY and JOHN DOES, Plaintiffs DANNENBAUM,
26 MELENDEZ and members of The CLASS entered into an implied contract with
27

1 Defendants to receive lawful wages for the actual time worked, including overtime pay
2 for hours worked in excess of 40 hours per workweek.

3 45. Defendants breached that implied contract by illegally falsifying time
4 records and by refusing and failing to pay legal wages.

5
6 46. As a direct and proximate result of the acts referred to above, Plaintiffs
7 DANNENBAUM, MELENDEZ and members of The CLASS suffered economic
8 damages including but not limited to back pay and interest, and other actual damages
9 in amounts to be determined at trial.

10
11 **IX. SEVENTH CAUSE OF ACTION**
12 **BREACH OF WRITTEN CONTRACT UNDER THE COMMON LAW**
13 **OF THE STATE OF WASHINGTON**

14 **Against DEFENDANTS CSK, SCHOFIELD, BRADLEY and JOHN DOES**

15 Plaintiffs reallege the above Paragraphs 1 through 46 with the same force and
16 effect and incorporates the same as though fully set forth herein.

17 47. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES provided
18 Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS with an Associate
19 Handbook. In this handbook, Plaintiffs DANNENBAUM, MELENDEZ and members
20 of The CLASS agreed to be honest in reporting their actual time work for any pay
21 period and Defendant agreed to pay wages for the actual time worked. Acceptance of
22 these terms of the handbook is a written contract.

23 48. Because Defendants falsified the time records and failed and refused to
24 pay for the actual time worked, including overtime pay for hours worked in excess of
25

1 40 hours per work week, the Defendants breached the written contract with Plaintiffs
2 DANNENBAUM, MELENDEZ and members of The CLASS.

3 49. As a direct and proximate result of the acts referred to above, Plaintiffs
4 DANNENBAUM, MELENDEZ and members of The CLASS has suffered economic
5 damages including but not limited to back pay and interest, and other actual damages
6 in amounts to be determined at trial.
7

8 **X. EIGHTH CAUSE OF ACTION**
9 **PROMISSORY ESTOPPEL UNDER THE COMMON LAW**
10 **OF THE STATE OF WASHINGTON**

11 **Against DEFENDANTS CSK, SCHOFIELD, BRADLEY and JOHN DOES**

12 Plaintiffs reallege the above Paragraphs 1 through 49 with the same force and
13 effect and incorporates the same as though fully set forth herein.

14 50. Defendants CSK, SCHOFIELD, BRADLEY and JOHN DOES promised to
15 pay Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS a fair and
16 legal wage for all hours actually worked in any pay period upon Defendant's offer of
17 employment to Plaintiffs and members of The CLASS.
18

19 51. Based on this promise, Plaintiffs DANNENBAUM, MELENDEZ and
20 members of The CLASS rejected all other offers of employment and came to work for
21 Defendants.

22 52. Plaintiffs DANNENBAUM, MELENDEZ and members of The CLASS
23 justifiably relied on Defendants' promise to pay and Defendant illegally falsified time
24 records and refused and failed to pay legal wages for the time actually worked by
25 Plaintiffs and members of The CLASS.
26

27 **COMPLAINT FOR DAMAGES - 15**

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1 53. As a result of Defendant's actions, Plaintiffs DANNENBAUM,
2 MELENDEZ and members of The CLASS suffered an injustice that can be avoided only
3 by repayment of all unpaid wages and such other legal and equitable relief, as the court
4 deems appropriate.
5

6 **XI. CLASS ACTION ALLEGATIONS**

7 54. Plaintiffs DANNENBAUM and MELENDEZ are members of a CLASS of
8 past and present hourly and store level exempt salaried sales associates and other titles,
9 including full and part time employees, who worked for the Lakewood Depot, Store
10 No. 1296, of Defendant CSK between on or about August 1999 and on or about March
11 12, 2002, in both the retail and wholesale divisions.
12

13 55. The number of past and present employees is too numerous to be named
14 individually and joinder of all members is impractical because they are believed to be in
15 excess of 100 such employees who are members of this CLASS.
16

17 56. The following questions of fact and law are common to the CLASS:

18 a. Whether Defendant CSK AUTO, INC. exercised control over the manner
19 in which The CLASS members performed their job duties so as to require
20 Defendant to classify and to compensate The CLASS members as employees,
21 including payment of overtime
22

23 b. Whether Defendant CSK AUTO, INC. it is an "employer" within the
24 meaning of federal and state law, requiring it to provide breaks, lunches and
25 overtime pay.
26

1 c. Whether Defendant failed to compensate The CLASS members for
2 overtime hours worked in excess of eight hours per day and forty hours per workweek
3 as required by federal and state law.

4 d. Whether Defendant violated 18 U.S.C. § 215.

5 e. Whether Defendant violated RCW 49.46.100; RCW 49.46.130 and RCW
6 49.52.050.

7 f. Whether Defendant violated Washington's Consumer Protection Act,
8 RCW 19.86. *et seq.*

9 g. Whether Defendant violated RICO, 18 U.S.C. § 1961, *et. seq.*

10 h. Whether Defendant breached the implied and/or written contract of
11 employment.

12 i. Whether members of The CLASS are entitled to damages pursuant to
13 Washington's common of promissory estoppel.

14 57. Plaintiffs DANNENBAUM and MELENDEZ will fairly and adequately
15 represent The CLASS because:

16 a. The named Plaintiffs' interests in prosecuting their claims against
17 Defendant are identical to the interest of absent CLASS members.

18 b. The named Plaintiffs have sufficient resources to prosecute the action and
19 have retained experienced and competent trial counsel in the subject, specialized area of
20 law.

21 c. The named Plaintiffs have background; experience and knowledge with
22 Defendants' unlawful employment practices in the type made complaints to Defendants

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1 concerning its practices, otherwise opposed Defendants' practices and participated in
2 an investigation of Defendants by Loss Prevention.

3 58. The prosecution of separate actions against the Defendants would create a
4 risk of inconsistent or varying adjudications with respect to individual members of The
5 CLASS, which would establish incompatible standards of conduct for the Defendants in
6 the classification and compensation of its present and past employees.

7 59. Questions of law and fact, common to the members of The CLASS,
8 predominate over any questions affecting only individual members, and a CLASS
9 action is superior to other available methods for the fair and efficient adjudication of the
10 controversy.
11

12 60. The CLASS members do not have a substantial interest in individually
13 controlling the prosecution of separate actions, because other than the calculation of the
14 amounts owed, the damages of each employee are virtually identical, and the
15 employees thus have no incentive to pursue individual actions.
16

17 61. There is no known litigation currently pending against Defendants,
18 individually or on behalf of The CLASS, other than the present lawsuit.
19

20 62. The individual Plaintiffs, the Defendants, a number of members of The
21 CLASS and all counsel are located in Pierce County, and therefore it is desirable to
22 concentrate the litigation of the claims within the selected forum.
23

24 63. There are no geographical or logistical issues, which would make
25 management of the CLASS difficult.
26

XII. INDIVIDUAL CAUSE OF ACTION
BY JOSE H. MELENDEZ
ILLEGAL FAILURE TO PROMOTE FOR DISCRIMINATORY
REASONS DUE TO RACE/NATIONAL ORIGIN
IN VIOLATION OF WASHINGTON STATE LAW, RCW 49.60. ET SEQ.

Plaintiff MELENDEZ has the following individual cause of action:

64. Plaintiff MELENDEZ is of Puerto Rican descent and is a member of a protected CLASS pursuant to Washington State law, RCW 49.60.030.

65. Plaintiff MELENDEZ was performing his job above the expectations of Defendants CSK, SCHOFIELD and BRADLEY.

66. On or about October 2001, Plaintiff MELENDEZ applied for the position of Wholesale Manager.

67. Plaintiff MELENDEZ was qualified for the position.

68. The position was given to a white male who was less than qualified for the position. This individual had no managerial experience, had no knowledge of the Lakewood Depot, was not adequately performing in his previous position and was a personal friend of Defendant BRADLEY and one of the Loss Prevention managers.

69. Defendants told Plaintiff MELENDEZ that he could not do the job because he was of Puerto Rican descent, because he had a Spanish accent and because he had a relationship with a white female employee. Said relationship was not against any rule or policy of the Defendants.

70. As a result of the Defendants' illegal employment action under RCW 49.60.180, Plaintiff Melendez suffered loss of back pay, front pay, emotional distress, pain and suffering and other damages in an amount to be proven at the time of trial.

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XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs DANNANBAUM, MELENDEZ and all members of The CLASS pray that judgment be entered in their favor and against Defendant as follows:

1. Order Defendants to make Plaintiffs and members of The CLASS whole by providing appropriate back pay with prejudgment interest, by paying withholding taxes and by affording Plaintiffs and The CLASS any other ordinary benefits of employees in amounts to be determined at trial and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
2. Order Defendants to make Plaintiffs and members of The CLASS whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in the above paragraphs, including out-of-pocket expenses, in amounts to be determined at trial.
3. Order Defendants to make Plaintiffs and members of The CLASS whole by providing compensation for non-pecuniary losses resulting from the unlawful employment practices described in the above paragraphs, including emotional pain, suffering and loss of enjoyment of life, in amounts to be determined at trial.
4. Order Defendants to pay Plaintiffs and members of The CLASS the full amount of wages withheld and exemplary damages for its violation of

COMPLAINT FOR DAMAGES - 20

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1 Federal and Washington wage and other laws, including but not limited
2 to 18 U.S.C. § 215, 18 U.S.C. § 1961 *et seq.*, RCW 49.46. *et seq.*, RCW
3 49.52.050, RCW 19.86. *et seq.* and Washington State common law.

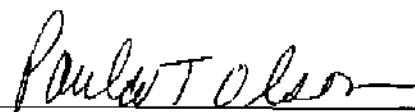
- 4
- 5 5. Order Defendants to make Plaintiff MELENDEZ whole by paying him
6 back and front pay and non-pecuniary losses resulting from the unlawful
7 employment practice described in the above paragraphs, including
8 emotional pain, suffering and loss of enjoyment of life, in amounts to be
9 determined at trial.
- 10
- 11 6. Reasonable attorney's fees and costs of suit.
- 12 7. For whatever further and additional relief the court shall deem to be just
13 and equitable.

14 **XIV. JURY DEMAND**

15 Plaintiffs demand a trial by a jury of 12.

16 DATED this 7th day of April 2004.

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18 Law Offices of GRANT & ASSOCIATES

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21 PAULA T. OLSON, WSBA #11584
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23 Attorneys for Plaintiffs DANNENBAUM,
24 MELENDEZ and Members of THE CLASS